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LEGAL DEPT. (KY)

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

THIRD PARTY TRANSIT TRAFFIC

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)

CASE NO. 2003-00045

**INITIAL RESPONSE OF THE
INDEPENDENT TELEPHONE GROUP**

The Kentucky Independent Telephone Group ("Kentucky Rural Local Exchange Carriers" or "RLECs")¹ respectfully submits these initial comments, by counsel, in response to the petition filed by BellSouth Telecommunications, Inc. ("BellSouth") on February 6, 2003, as captioned above ("BellSouth Petition").

These initial comments are necessary to address several omissions and potentially misleading statements in the BellSouth Petition and to ask the Public Service Commission to proceed in a logical framework consistent with the facts. These initial comments are not intended as an exhaustive discussion and do not set forth the RLECs' position on every issue related to the BellSouth Petition. Furthermore, by a separate Emergency Petition, the RLECs ask the Commission to order BellSouth to honor all of the effective terms and conditions with respect to the interconnection arrangements that BellSouth has with the RLECs and to order BellSouth to maintain, until otherwise ordered, all existing contracts and associated settlements with the RLECs.

¹ The Kentucky RLECs are a group of small and rural local exchange carriers providing service throughout Kentucky. The group includes Ballard Rural Telephone Cooperative; Brandenburg Telephone Company; Coalfields Telephone Company; Duo County Telephone Cooperative; Foothills Rural Telephone Cooperative; Highland Telephone Cooperative; Logan Telephone Cooperative; Mountain Telephone Cooperative; North Central Telephone Cooperative; Peoples Rural Telephone Cooperative; South Central Rural Telephone Cooperative; Thacker-Grigshy Telephone Company; and West Kentucky Rural Telephone Cooperative.

I. INTRODUCTION.

BellSouth has filed its petition ostensibly to address what it refers to as “third party transit traffic.” As will be demonstrated below, this third party traffic issue is the sole result of BellSouth’s own actions. BellSouth’s use of this terminology confuses the true nature of BellSouth’s arrangement with the RLECs. The petition represents an attempt by BellSouth unilaterally to remove itself from its obligations and to create rights for itself that simply do not exist.² BellSouth’s intended changes would be harmful and chaotic to the RLECs and their customers. The BellSouth Petition also seeks to dismantle the overall intraLATA Primary Carrier Plan that the Commission designed and ordered, and that has been in place for several years.

The BellSouth Petition does not properly reflect the actual physical and economic terms under which BellSouth obtains services from the RLECs pursuant to the current interconnection arrangement. Accordingly, as set forth in this Response, the issues merit further consideration and examination by the Commission far beyond the portrayal presented by BellSouth.

BellSouth claims incorrectly that there is a dispute between it and the RLECs.³ The RLECs have no dispute with BellSouth unless BellSouth proceeds to carry out its apparent threat to discontinue payments for terminating service. BellSouth has an established access arrangement with the RLECs as ordered by the Commission. The RLECs expect BellSouth to comply with all of the

² As this Response will demonstrate, BellSouth’s description of a “transit” service that BellSouth provides to third party carriers is a service that BellSouth designed for those third party carriers without any involvement by the RLECs. The RLECs are not parties to the bilateral agreements that BellSouth has with the third party carriers. BellSouth does not have authority to make representations on behalf of the RLECs to third party carriers when BellSouth negotiates interconnection agreements with third party carriers and offers them services, and the agreements that BellSouth has made with third party carriers do not and cannot bind the RLECs.

³ BellSouth Petition at p. 1.

terms of that arrangement, and not to selectively comply with and benefit from some terms while disregarding others. Whether a dispute will arise depends on whether BellSouth intends to purposely breach the terms of the existing Commission-ordered plan. BellSouth's announced intentions are to continue to make use of the interconnection facilities with the RLECs, but to unilaterally disregard compensation terms.⁴

To the extent that BellSouth wants some new arrangement with the RLECs, it is incumbent upon BellSouth to order access services or to request, discuss, and negotiate mutually beneficial and acceptable terms with the RLECs and to obtain the necessary approval from the Commission.⁵ Regardless, the new arrangements that BellSouth appears to want present serious concerns and implications. BellSouth appears to believe incorrectly that in a competitive marketplace it has the right to impose involuntary network hierarchy and business arrangements on other carriers such as the RLECs.⁶

⁴ BellSouth has announced its intention to continue to send third party traffic to the RLECs over the access facility but intends not to compensate the RLECs for the services that BellSouth receives and makes available to the third party carriers. The unilateral changes that BellSouth is attempting to impose would force the RLECs into a choice between providing terminating services to BellSouth, for which the RLECs would receive no compensation, or severing the interconnection facilities with BellSouth.

⁵ If BellSouth wants to establish some new form of interconnection with the RLECs to accommodate BellSouth's intended service offerings, then it must request interconnection and negotiate proper terms with the RLECs and enter into proper interconnection agreements which set forth these terms and conditions. Instead, BellSouth is attempting to unilaterally establish a new form of interconnection by simply declaring that it has changed the existing access interconnection ordered by the KRSP.

⁶ The RLECs have no involuntary obligation to subtend a Bell company's network, and Bell companies have no right to demand that smaller LECs subtend a Bell tandem with respect to third party carriers. Moreover, there is no requirement or expectation that third party carriers can simply connect to a Bell company and achieve interconnection with other carriers. Moreover, a Bell company cannot declare that it is the mandated tandem provider and intermediary among carriers and that other carriers must involuntarily subtend the Bell network for such purposes. No carrier would

The current arrangement under which BellSouth and the RLECs operate is the direct consequence of the Commission's "Kentucky Restructured Settlement Plan" ("KRSP") decision.⁷ The Commission ordered the KRSP, and then BellSouth and the RLECs entered into agreements that conformed the facilities and interconnection relationship to that required by the KRSP. The Commission ordered that the RLECs should be paid access charge rates for the functions provided to BellSouth for the traffic that BellSouth terminated to the RLECs under this arrangement.

Beyond its reference to its third party carrier arrangements, BellSouth also claims to be seeking termination of other terms of the existing intraLATA agreement. This action by BellSouth brings into question other, more far-reaching issues regarding the continued role that BellSouth intends to play in the provision of long distance, intraLATA interexchange services to the customers of the RLECs. The Commission-ordered KRSP plan cannot be unilaterally altered by BellSouth. Modifications to, or termination of the plan require Commission involvement and approval. BellSouth's stated action to terminate the entire agreement apparently means that BellSouth intends no longer to be the primary carrier of intraLATA interexchange services to the RLEC's end users.

ultimately be able to compete with BellSouth if it had such supreme powers.

⁷ *Order, In the Matter of An Inquiry into IntraLATA Toll Competition, an Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality*, Administrative Case No. 323, Phase I, January 23, 1991. Historically, BellSouth has been referred to as the "Primary Carrier" in this arrangement in that it was, at least initially, the predominant IXC in the provision of intraLATA toll services to the RLECs' end users. As such, BellSouth originates and terminates traffic on the RLECs' networks over the existing interconnection facilities that BellSouth has established with the RLECs. BellSouth competes with other IXCs (including some IXCs that are affiliates of the RLECs) that provide intraLATA toll services to end users, but only BellSouth is considered the Primary Carrier. The RLECs' access service treatment of all other IXCs is equal to that applied to BellSouth.

This suggests that the end users of BellSouth's primary carrier intraLATA interexchange services could immediately be subjected to service disruptions.⁸ To the extent that BellSouth were allowed to discontinue its service as the KRSP primary carrier to the end users of the RLECs, then there would also need to be an implementation plan to transition those customers to other interexchange service providers.⁹ Moreover, if BellSouth were actually to terminate the agreement, then the RLECs would need to terminate the interconnection arrangement and disconnect the facilities because there would no longer be any Commission-authorized interconnection between BellSouth and the RLECs or any right for BellSouth to use the interconnection facilities under the KRSP terms. BellSouth would need to order tariffed access services just as any other IXC.

II. BELL SOUTH HAS CREATED ITS OWN PROBLEM WITH THIRD PARTY CARRIERS AND HAS NO RIGHT TO SHIFT THAT PROBLEM TO THE RLECs.

BellSouth explains in its petition that it has used the KRSP facilities in a manner not originally contemplated by the parties.¹⁰ What BellSouth fails to mention is that it was its sole actions, through its use of the access service arrangement with the RLECs, that resulted in offering of a service for termination of Commercial Mobile Radio Service ("CMRS") traffic to the RLECs. BellSouth, without the involvement of the RLECs, apparently made representations and offers to the CMRS carriers to provide this service. The only arrangement that BellSouth had (and still has) in place under which it may terminate traffic with the RLECs was and remains the KRSP authorized access arrangement. The RLECs provided no authorization to BellSouth to make any representations

⁸ BellSouth will need the approval of the Kentucky Commission to discontinue its role as primary carrier under the KRSP.

⁹ In such event, the RLECs would work with the Commission to formulate a plan under which such a transition could proceed in an orderly manner without customer confusion or hardship.

¹⁰ BellSouth Petition at para. 16.

to CMRS carriers inconsistent with the services the RLECs provided solely to BellSouth. BellSouth now improperly portrays history by suggesting that it was somehow the victim of others with respect to BellSouth's contractual third party and CMRS carrier arrangements.

BellSouth next complains that it was unable to differentiate the CMRS traffic, and attempts to use this claim to suggest incorrectly that the traffic was not its access traffic.¹¹ However this traffic does not just “look like” access, it is access. If this traffic was not within the scope of the access traffic that BellSouth was authorized to terminate pursuant to the KRSP agreement, then BellSouth had no right to send this traffic to the RLECs in the first place. Instead, it clearly used, and continues to use, the access services obtained from the RLECs to provide the terminating service to CMRS carriers. As with any IXC that obtains access services from a LEC, if the IXC delivers some other carrier's traffic to the LEC, the IXC nevertheless remains responsible for compensation for the services obtained.

It is common practice for IXCs to terminate traffic originating from the networks of CMRS and other carriers. This creates no problems for the IXCs or for the RLECs. It would be a serious violation of terms, however, for an IXC purposely to send traffic with the intent of avoiding compensation. BellSouth's statements and actions suggest that a carrier such as BellSouth can establish an access service arrangement with the RLECs, decide for itself to use the access arrangement for some other carrier's traffic, and then simply state that it is not responsible for compensation for that traffic because it is third party traffic. If this scenario were actually available to carriers, chaos would be unleashed in the telecommunications industry. Every carrier would seek to “hide behind” an intermediary so as to avoid the compensation responsibility.

¹¹ *Id.* at para. 17.

BellSouth also confuses the Federal Communications Commission's ("FCC") interconnection requirements and rules. First, BellSouth attempts to invoke some notion of "local" traffic with respect to the access services it obtains from the RLECs.¹² Regardless of what theory BellSouth may have in mind, where a CMRS carrier utilizes the services of a carrier that obtains access services from terminating LECs, the traffic is not within the scope of traffic subject to the local interconnection rules and compensation scheme.¹³ That traffic is subject to access charges, as it always has been.

BellSouth complains that the CMRS carriers will not provide BellSouth with the proper compensation.¹⁴ One should remember, however, that BellSouth entered into contractual agreements with these CMRS carriers that govern the compensation terms. BellSouth apparently, in some cases, did not structure its contracts properly to ensure that its offers were rational or that its representations to the third party carriers were consistent with the facts.¹⁵ Now, BellSouth misleads the

¹² BellSouth Petition at para. 18.

¹³ BellSouth does not suggest what theory or FCC rules apply to its access service use of the RLECs network for termination of traffic. The interconnection that BellSouth has with the RLECs is between an IXC and a LEC and is one governed by the Kentucky Public Service Commission-ordered KRSP. BellSouth is not a CMRS carrier in this arrangement. BellSouth neglects to recognize that the paragraph it cites in the FCC's *First Report and Order* recognizes that traffic carried by an IXC is subject to access charges and is not subject to the local interconnection compensation framework. See BellSouth Petition at note 3.

¹⁴ *Id.* at para. 18.

¹⁵ BellSouth suggests that carriers have an obligation to interconnect with other LECs and CMRS carriers. The CMRS carriers are free to request interconnection with the network of an RLEC consistent with the controlling requirements, but generally have not done so, probably because of the advantageous arrangement that BellSouth provides to these carriers. There are established, statutory provisions which set forth the rights for carriers to request interconnection with incumbent LECs and for the incumbent LECs to negotiate and implement interconnection with the requesting carrier. BellSouth fails to mention that the RLECs have no obligation or reason to request interconnection of other parties. The RLECs obligation is solely to respond to requests from other

Commission by suggesting that the CMRS carriers are "avoiding the access fees charged by the [RLECs]."¹⁶ Of course, this statement is wrong for multiple reasons. First, the CMRS carriers are not avoiding anything with the RLECs because the CMRS providers in BellSouth's contracts have no legal or binding relationship with the RLECs and have no obligation to make any payment to the RLECs. Second, the obligation to pay the RLECs rests with BellSouth, as the carrier utilizing terminating access services from the RLECs as authorized by the KRSP. To the extent that CMRS carriers are avoiding anything, they are doing so by taking advantage of the ill-conceived contract that BellSouth offered.

BellSouth also complains that it does not want to perform the role of "banker." However, again, it was BellSouth that put itself in this role solely by its own actions. The CMRS carriers and BellSouth chose to use BellSouth's access facility and arrangement with the RLECs. BellSouth now wants to keep the access arrangement, but avoid paying for terminating traffic.¹⁷

BellSouth claims that it cannot identify the minutes for its own third party traffic.¹⁸ However, this suggestion cannot be squared with the facts that it is BellSouth that receives this traffic directly from the third parties, it is BellSouth that switches the traffic through its tandem offices, and it is BellSouth that switches and delivers the traffic over KRSP access trunking facilities

carriers. As incumbent LECs, the RLECs have no statutory or time-certain right to force non-incumbent carriers to interconnect with their networks. Any suggestion that the RLECs can force third parties into interconnection agreements is wrong. The RLECs currently have no relationship with the third parties with which BellSouth has contracted.

¹⁶ *Id.* at para. 18.

¹⁷ The RLECs strongly disagree with BellSouth's suggestion that so-called "bill and keep" is the trend for the form of interconnection that BellSouth has with the RLECs or for the terms of actual interconnection between CMRS carriers and LECs. *Id.* There is no bill and keep approach for access services provided to IXCs.

that BellSouth has established with each of the RLEC companies. In the very next paragraph of its Petition, BellSouth claims that it wants to provide records to the RLECs so that BellSouth would no longer be responsible for compensation to the RLECs.¹⁹ However, these are records for the same traffic that BellSouth surprisingly claims it cannot identify.

BellSouth goes on to observe that BellSouth and the CMRS carriers are contractually moving to some form of "meet point billing."²⁰ This suggestion fails to recognize that these carriers can make such changes between themselves, but neither has ordered, contracted for, or made any such payment obligation and billing arrangement with the RLECs. In any event, the RLECs cannot be forced into perpetual meet point billing arrangements with BellSouth and third parties. Moreover, in this case, BellSouth is attempting to force such arrangements on the RLECs.²¹

¹⁸ *Id.* at para. 17.

¹⁹ *Id.* at para. 19. BellSouth misleadingly suggests that its access charge payments to the RLECs should "rightfully" be made by the CMRS carriers. But, BellSouth's payment obligations are governed by the KRSP. By "rights," BellSouth must either comply with the terms of the KRSP that it has with the RLECs or request, establish, and provision new arrangements for routing of the traffic pursuant to separate tariff offerings or new contracts. BellSouth's attempts around this "rightful" process (*i.e.*, an attempt to unilaterally impose a new form of interconnection on the RLECs) is actually an attempt by BellSouth to deny the RLECs of the same rights to negotiate interconnection with other carriers that BellSouth and its third party partners fully exercised for themselves.

²⁰ *Id.*

²¹ BellSouth states that it is currently providing the RLECs with the information that would be necessary to bill the CMRS carriers in lieu of billing BellSouth. *Id.* at para. 23. Without reiterating all of the arguments set forth above, BellSouth has not shown that it does, or can, provide complete and accurate information. Even if BellSouth were to provide accurate information, the RLECs have no contractual or tariff authority to bill other carriers, and no other carrier has offered to take on the payment obligation for BellSouth. Furthermore, if the RLECs billed other carriers and the other carriers failed to pay, the RLECs have no terms and conditions in place with either BellSouth or other carriers that would ensure payment or the ability of the RLECs to suspend termination of the subject traffic. Moreover, there are no terms and conditions that would allow the RLECs to audit the records of BellSouth. There are no terms that set forth the measurement and recording responsibilities of BellSouth or the consequences when BellSouth fails in these duties.

BellSouth attempts incorrectly to draw parallels for its new billing proposal to that which applies to IXCs for arrangements between LECs where multiple LECs are providing access services to IXCs, *i.e.* meet point billing.²² However, this comparison is not valid. IXCs order access and pay for the access services regardless of whether the terminating traffic is their own or that of another carrier. Also, the terms and conditions for payment and service are set forth in tariffs. Where multiple LECs jointly provide access services to IXCs on a meet point billing basis, the arrangement does not apply unless and until the multiple LECs agree on the meet point and the terms under which they will jointly provide service are reflected in access tariffs (and sometimes meet point billing agreements between the LECs).

With meet point billing to IXCs, the RLECs are capable of identifying, measuring, and billing the traffic. Moreover, the tariffs of the RLECs provide for the discontinuation of the access services to an IXC in the event of non-payment, and the RLECs are capable of suspending service because it can be readily and separately identified. Under IXC meet point billing, the arrangement is voluntary.

One LEC (such as an RLEC) is not forever bound to a meet point billing arrangement with a Bell company if the RLEC no longer wants to provide its access services in such a manner. However, with respect to BellSouth's apparent proposals for third party carriers, BellSouth apparently believes that they can dictate these terms on an involuntary basis to the RLECs without any opportunity for the RLECs to alter or terminate the arrangement.

BellSouth also fails to note that, throughout the time period during which communications

Currently, the RLECs have no meaningful way to ensure that BellSouth is accurately reporting traffic. None of these problems arise under the current KRSP because BellSouth is responsible for the traffic, in total, and the RLECs can identify the traffic, in total, as it does with all other IXC access trunk groups.

²² *Id.* at para. 19.

about this subject have taken place, the RLECs have repeatedly made it clear to BellSouth that it was not authorized to terminate third party traffic without accepting responsibility for compensation to the RLECs.²³ The meetings that BellSouth cites were nothing more than BellSouth informing the RLECs of the terms that BellSouth intended to impose and simply “dump” its problem on the RLECs.

BellSouth is correct that RLECs have responded to CMRS carriers’ requests for interconnection and entered into interconnection agreements consistent with the controlling rules, and these agreements have been approved by the Commission.²⁴ Unfortunately, BellSouth has entered into agreements with CMRS carriers, including its own affiliate CMRS carrier, that includes terms under which BellSouth terminates CMRS traffic through BellSouth’s access arrangement with the RLECs without the RLEC’s knowledge or authorization. As a result, the CMRS carriers do not have any incentive to request interconnection with the RLECs pursuant to the proper and controlling interconnection rules.²⁵

III. REQUEST FOR COMMISSION ACTION.

To the extent that BellSouth wants to terminate its agreements with the RLECs under which the entire KRSP would expire, then the Commission should investigate whether such change is in the public interest and what new conditions, if any, should replace the old. The Commission would also need to determine a necessary implementation plan to terminate the interconnection facility

²³ *Id.* at para. 20.

²⁴ *Id.* at para. 21.

²⁵ There are no interconnection rules that address or prescribe BellSouth’s so-called “transit” arrangement, and BellSouth has neither requested nor established any such transit arrangement with the RLECs.

authorized under the KRSP and allow an orderly transition so as not to harm or burden end users.²⁶

Until the Commission is able to analyze and order such major changes, the Commission should require BellSouth to continue to pay KRSP settlements for all traffic terminated to the RLECs over the interconnection facility governed by the KRSP.

With respect to third party traffic, to the extent that BellSouth wants to establish some new form of "Contractual Services Agreement" with the RLECs that would allow BellSouth to offer what it refers to as "transiting" services to third party carriers under some new terms and conditions with the RLECs, BellSouth is free to request such an arrangement and negotiate terms with the RLECs.²⁷

That contractual arrangement would require Commission review and approval, and there are a number of issues which would need to be resolved between BellSouth and the RLECs for this type of new arrangement properly to be in place.²⁸

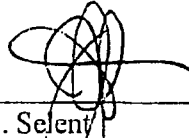
²⁶ Neither the RLECs nor the Commission have any meaningful or accurate information about the magnitude of third party traffic that BellSouth has unilaterally undertaken to send to the RLECs. Only BellSouth is in a position to determine to which carriers BellSouth provides such transit services, the nature of the traffic for each carrier, and the individual amounts for each carrier. The Commission should order BellSouth to undertake a complete and accurate inventory and measurement of the extent of its third party services and traffic.

²⁷ There has been no proceeding, policy analysis, or any examination of the public interest to conclude that large LECs (such as BellSouth) have been chosen to be the intermediary situated between all other competing carriers. A detrimental and chilling effect will overhang the promotion of competition if a framework is promoted whereby one large LEC is granted the status to situate itself, according to its terms, at the center, between all other competitors. This is of particular concern given the experience of smaller LECs over the last several years who have been the victims of unauthorized traffic, inaccurate measurement, lost settlements, and related disputes with the large companies with respect to their abuse of existing connecting carrier arrangements.

²⁸ For example, the terms and conditions would need to address the manner in which either party may deliver third-party traffic to the other, the trunking facilities to be used, and the interconnection point on the network of the RLECs for such purpose. BellSouth has no more right to be a tandem provider for third party traffic than any RLEC. It is imperative that the trunking be designed in a manner to ensure the proper treatment of traffic between carriers. The three party arrangements would also need to be limited to some threshold level of traffic. As other examples,

Finally, the RLECs are concerned that end user services should not be unnecessarily disrupted without proper notice and transition. The Kentucky RLECs have shown that they are willing and capable of responding to CMRS interconnection requests. RLECs continue to provide BellSouth with terminating access services authorized by the KRSP. RLECs are willing to negotiate, with mutually agreeable terms, a Commission-approved Contract Services Agreement with BellSouth so that BellSouth can offer a special termination arrangement to third parties. No such arrangement should allow BellSouth to hinder direct interconnection between other carriers and RLECs.

Respectfully submitted,



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among many others, the terms of proper agreements must address (1) the manner in which traffic from third party carriers will be identified, distinguished, and measured; the relative responsibilities of the parties for these functions, and the liability in the event that these functions are not fulfilled completely and accurately; (2) the manner in which the parties will assure that the arrangement will not be used to deliver unauthorized traffic types; (3) terms for resolution of disputes potentially among multiple parties; (4) termination of the arrangement for violations; (5) equal assurance that both the tandem provider and the ultimate terminating carrier will both be compensated; (6) criteria under which either party may elect to no longer participate in the tandem, third-party arrangement; (7) discontinuation of services for non-payment; (8) audits; (9) the criteria under which third parties must seek physical connections with the terminating carriers, and so on.



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March 12, 2003

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Initial Response of the Independent Telephone Group was served by mailing a copy of the same via first class United States mail, postage prepaid, to the individuals on the attached Service List this ^{12th}~~17th~~ day of March, 2003.



**COUNSEL TO THE INDEPENDENT
TELEPHONE GROUP**

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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LEGAL DEPT. (KY.)

In the Matter of:

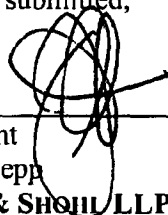
THIRD PARTY TRANSIT TRAFFIC)

Case No. 2003-00045)

ADDENDUM TO MOTION FOR FULL INTERVENTION

Counsel to the Independent Telephone Group and its members (the "ITG"), informs the Commission that due to a clerical error of counsel, a member of the ITG was unintentionally omitted from paragraph 1 of the ITG's recently-filed motion for full intervention, although the omitted member was included in the certificate of service for that motion. Logan Telephone Cooperative, Inc., is a member of the ITG, and it should have been included in the list of ITG members set forth in paragraph 1 of the motion for full intervention. The ITG, therefore, respectfully requests that the Commission allow Logan Telephone Cooperative, Inc. to intervene in this matter as a member of the ITG for the reasons set forth in the ITG's motion for full intervention.

Respectfully submitted,



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**COUNSEL TO THE INDEPENDENT
TELEPHONE GROUP**

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Initial Response of the Independent Telephone Group was served by mailing a copy of the same via first class United States mail, postage prepaid, to the individuals on the attached Service List this 12th day of March, 2003.



**COUNSEL TO THE INDEPENDENT
TELEPHONE GROUP**

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LEGAL DEPT. (KY)

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

THIRD PARTY TRANSIT TRAFFIC

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CASE NO. 2003-00045

**PETITION FOR EMERGENCY RELIEF AND
REQUEST FOR STANDSTILL ORDER
BY THE KENTUCKY INDEPENDENT TELEPHONE GROUP**

The Kentucky Independent Telephone Group (the "Kentucky Rural Local Exchange Carriers" or the "RLECs")¹ respectfully submits this Petition, by counsel, for emergency relief and a standstill order directing BellSouth Telecommunications, Inc. ("BellSouth") to maintain all existing contractual arrangements, as well as to honor all effective terms and conditions of existing agreements and tariffs with respect to the interconnection facilities and services provided by each RLEC to BellSouth pursuant to the Public Service Commission-approved Kentucky restructured settlement plan. In support of its Petition, the RLECs state the following.

1. Each of the RLECs is a rural incumbent local exchange carrier serving rural areas of the Commonwealth of Kentucky pursuant to Certificates of Public Convenience and Necessity granted by this Commission.

2. The RLECs participate in the provision of an intraLATA telecommunications services

¹ The Kentucky RLECs are a group of small and rural local exchange carriers providing service throughout Kentucky. The group includes Ballard Rural Telephone Cooperative; Brandenburg Telephone Company; Coalfields Telephone Company, Duo County Telephone Cooperative; Foothills Rural Telephone Cooperative; Highland Telephone Cooperative; Logan Telephone Cooperative; Mountain Telephone Cooperative; North Central Telephone Cooperative; Peoples Rural Telephone Cooperative; South Central Rural Telephone Cooperative; Thacker-Grigsby Telephone Company; and West Kentucky Rural Telephone Cooperative.

arrangement provided over network facilities interconnected with BellSouth. The interconnection arrangements, terms, and conditions between each RLEC and BellSouth are governed by intrastate access services tariffs and contracts which have been implemented under the authority of, and subject to the supervision and oversight of the Commission.

3. With respect to the provision of intraLATA switched interexchange services, each RLEC has implemented intraLATA equal access. When an end user customer is provided basic local service by an RLEC, that customer may elect to utilize an intraLATA toll provider of his or her choice, including BellSouth. When the customer originates an intraLATA toll call, the RLEC provides the intraLATA toll carrier (*i.e.*, BellSouth or an alternative carrier chosen by the customer) with originating access service and charges the toll carrier for the originating access service in accordance with the RLEC's effective access services tariff rates. When BellSouth or any other intraLATA toll provider terminates a call to an end user customer served by an RLEC, that RLEC provides the toll carrier with terminating access service and assesses charges in accordance with its effective access services tariff rates. Accordingly, with respect to intraLATA interexchange services, each RLEC treats BellSouth and all similarly situated intraLATA toll carriers in the same manner by providing originating and terminating access services on an equal basis, according to the same rates and charges contained in each of the RLEC's filed access services tariffs.

4. The current arrangement by which BellSouth and the RLECs provide for intrastate, intraLATA interexchange services to the public is the direct consequence of the Commission's "Kentucky Restructured Settlement Plan" ("KRSP") decision.² BellSouth originates and terminates

² *Order*, In the Matter of An Inquiry into IntraLATA Toll Competition, an Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality, Administrative Case No. 323, Phase I, January 23, 1991.

traffic on the RLECs' networks over the existing access facilities that BellSouth has established with the RLECs pursuant to the KRSP. BellSouth competes with other IXC's (including some IXC's that are affiliates of the RLECs) that provide intraLATA toll services to end users, but only BellSouth is considered the Primary Carrier.³

5. On January 31, 2003, BellSouth representatives transmitted correspondence to each RLEC purporting to announce new terms and conditions between BellSouth and the RLECs with respect to the interconnected service arrangements. The BellSouth correspondence indicates an intent by BellSouth unilaterally to breach the terms of the existing contracts and access tariffs by continuing to use the access facilities that BellSouth has established with the RLECs and to unilaterally disregard the established compensation terms. BellSouth threatens to withhold payments due to the RLECs under applicable contracts and tariffs.

6. On February 6, 2003, BellSouth filed a petition with the Commission seeking resolution of disputes regarding the manner in which BellSouth has structured its relationship with third party carriers, including Commercial Mobile Radio Services ("CMRS") providers.⁴

7. In separate Comments filed with this Petition, the RLECs have set forth their initial analysis of the BellSouth Petition. The initial Comments submitted by the RLECs address several omissions and potentially misleading statements in the BellSouth Petition. As the Comments demonstrate, the BellSouth Petition is an attempt by BellSouth unilaterally to remove itself from its obligations, to create rights for itself that simply do not exist, and to unilaterally impose unauthorized

³ At the initiation of the KRSP, BellSouth was the predominant IXC in the provision of intraLATA toll services to the RLECs' end users.

⁴ BellSouth Telecommunications, Inc.'s Petition Seeking Resolution of Third Party Traffic Issues, filed with the Commission on February 6, 2003.

and improper business and interconnection arrangements on the RLECs. BellSouth has created its own problem with third party carriers and has no right to shift that problem to the RLECs.

8. In the absence of mutual agreement, good faith negotiation, and the approval of this Commission, BellSouth has proceeded to attempt unilaterally to institute significant changes in its intercarrier service arrangements with the RLECs. BellSouth has arbitrarily announced that, pursuant to agreements reached exclusively by BellSouth and the third party, it will cease providing compensation to the RLECs with respect to traffic originated on the networks of other carriers (*e.g.*, CMRS) and terminated on an RLEC's network. BellSouth has announced its intent to initiate these changes unilaterally, contrary to the existing regulatory requirements and the Commission-ordered and approved contractual terms and conditions, and without regard to the financial and operational impact on the RLECs and their customers.

9. The interconnection arrangements, terms, and conditions between BellSouth and the RLECs have been established in the past through mutual negotiation, Commission examination and oversight of the terms and conditions, and all applicable law, rules, and regulations. As such, there has been minimal need for Commission intervention or action in the past. Unfortunately, BellSouth's recent actions to disregard its commitments, and its apparent position that it has the right to impose, by fiat, network hierarchy, interconnection arrangements, and business terms on the RLECs now gives rise to the extraordinary need for Commission action.

10. Action by the Commission is necessary to alleviate the uncertainty and instability that arises with BellSouth's announced intention to dishonor the terms of the agreements and tariffs and, further, by its threat to alter all intercarrier service arrangements with the RLECs.

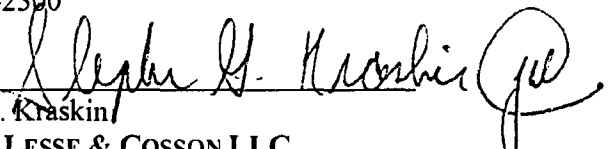
WHEREFORE, the RLECs respectfully request that the Commission issue an order directing BellSouth to standstill and abide by all existing contractual terms and conditions and all effective

tariffs governing compensation for the KRSP interconnection facilities and services, pending the conclusion of all appropriate processes and procedures (either formal or informal) required to establish any new terms and conditions as determined either by mutual negotiation or regulatory requirement. The existing KRSP interconnection arrangement is the only arrangement currently available to BellSouth for termination of traffic. The RLECs believe that the overall public interest would be best served by the Commission ordering the continuation of the current agreements, during which time the Commission can examine this matter consistent with the request for action contained in Section III of the RLECs' separate comments.

Respectfully submitted,



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**COUNSEL TO THE INDEPENDENT
TELEPHONE GROUP**

March 12, 2003

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Petition for Emergency Relief and Request for Standstill Order by the Kentucky Independent Group was served by mailing a copy of the same via first class United States mail, postage prepaid, to the individuals on the attached Service List this 12th day of March, 2003.



COUNSEL TO THE INDEPENDENT
TELEPHONE GROUP

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

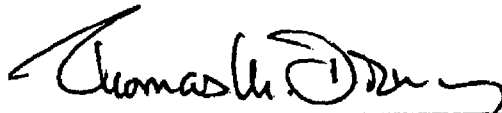
In the Matter of:

PETITION OF BELL SOUTH TELECOMMUNICATIONS,)	CASE NO.
INC. SEEKING RESOLUTION OF THIRD PARTY)	2003-00045
TRANSIT TRAFFIC ISSUES)	

STAFF NOTICE OF INFORMAL CONFERENCE

Commission Staff hereby notifies parties to this proceeding and other interested persons that an informal conference has been scheduled for March 26, 2003, at 10:00 a.m., Eastern Standard Time, in Conference Room 1 of the Commission's offices at 211 Sower Boulevard in Frankfort, Kentucky.

The purpose of the conference is to discuss the petition of BellSouth Telecommunications, Inc. ("BellSouth") and the response of the Independent Telephone Group. All parties should be prepared to discuss each argument raised by BellSouth regarding why BellSouth should be relieved from paying third party terminating access on "transit" traffic.



Thomas M. Dorman
Executive Director
Public Service Commission
P. O. Box 615
Frankfort, Kentucky 40602

Dated: March 12, 2003

cc: Parties of Record